

Notice of Allowability

Application No.

10/757,426

Examiner

Dwin M. Craig

Applicant(s)

HORIKAWA, TAKASHI

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/22/2007.
2. ☒ The allowed claim(s) is/are 1,3-7,9-12,14-18 and 20-22.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

and

REASONS FOR ALLOWANCE

1. Claims 1, 3-7, 9-12, 14-18 and 20-22 are allowed.
2. Regarding the objection to the specification as set forth in the Final Office Action of 3/19/2007, after a careful review of Applicants' specification the previously applied objection to the specification has been withdrawn. The reference being referred to on page 15, more specifically *non-patent literature 1* is the reference being disclosed on page 2 of the specification, more specifically, "Connie U. Smith, Software Performance Engineering, pp. 157-224, Addison- Wesley, Reading, MA". Merely referring to non-patent literature in a specification to provide background on relevant teachings in a technological art is not sufficient grounds for objecting to a specification.

Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance:

Regarding the 35 U.S.C. 101 rejections of claims, 1, 3-7, 9-12, 14-18 and 20-22 as set forth in the 3/19/2007 Final Office Action, after reconsideration of the current claim language in light of Applicants' arguments as set forth in the Appeal Brief filed on 10/22/2007 the previously applied rejections of the claims are withdrawn.

In regards to independent claim 1 it is clear from the disclosed structural teachings in the specification's embodiments that the claimed *mechanism* could not be reasonably interpreted as covering a software only embodiment, further and in regards to the 3rd and 4th embodiments,

these structural teachings clearly limit the claimed *mechanism* to embodiments including at least some hardware. Therefore independent claim 1 fails to teach a *software only* embodiment.

In regards to the claimed subject matter having a concrete, useful and tangible result, as required by 35 U.S.C. 101, on page 8 of the Appeal Brief, Applicants' argued,

"First, it is argued that the tangible result provided by the claims is the presentation of the system performance prediction. The presentation of a system performance prediction is practical real-world result that allows the system designer to determine whether the design of the system is adequate."

The Examiner has found this argument to be persuasive and hereby withdraws the 35 U.S.C. 101 rejections of claims 1 & 12.

3.1 Regarding dependent claims 3-7, 9-11, 14-18 and 20-22 are allowed for at least the reason that they depend upon an allowed base claim.

3.2 Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M. Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

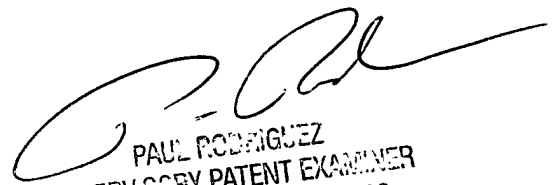
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul L. Rodriguez can be reached on (571) 272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dwin McTaggart Craig
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PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
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